

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re:

JAMES S. PENDERGRAFT, IV,

Case No. 6:18-bk-06437

Chapter 7

Debtor.

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**TRUSTEE'S RESPONSE TO M & T BANK'S VERIFIED
MOTION FOR RELIEF FROM AUTOMATIC STAY (DOC. 58)**

Arvind Mahendru ("Trustee"), by and through his undersigned counsel, files this Response to the Verified Motion for Relief from the Automatic Stay (Doc. 58; the "Motion") filed by M & T Bank ("M & T") with respect to real property located at 609 Virginia Drive, Orlando, Florida 32803 (the "Subject Property"). In support, Trustee respectfully states as follows:

1. Debtor filed for a voluntary chapter 7 bankruptcy petition on October 18, 2018 (the "Petition Date"), with assigned case number 6:18-bk-06437-KSJ.
2. The Trustee was appointed as the Chapter 7 trustee in this case.
3. The initial 341 Meeting of Creditors (the "341 Meeting") was originally held on February 8, 2019. The 341 Meeting has been continued two (2) additional times with the next continued 341 Meeting being scheduled for March 5, 2019.
4. At this time the trustee believes the estate is, or will soon be declared, the 100% owner of 609 Virginia Drive, LLC, a Florida limited liability company (the "Company"), the Mortgagor of the Subject Property.
5. The Company holds a valuable real estate asset with significant equity. It is a critical asset of this Estate.

6. Currently, the Debtor has disclosed that he transferred 1% of the ownership of the Company to a trust, including all the alleged management control of the Company. Debtor alleges he only retains the remaining 99%, without management control.

7. The Estate is currently reviewing the proper way to bring the 1% back into the Estate but the Trustee anticipates that it will be declared 100% owned by the Estate. Until that occurs, however, the Estate cannot manage the Company to resolve the default.

8. In addition, the creditor is fully secured and therefore adequately protected.

9. Relief from stay should be denied pending the Trustee's investigation and actions to recover the 1% and then liquidation of the assets, which can then be used to pay M & T in full.

WHEREFORE, Trustee respectfully requests that this Court deny the Motion and grant such other relief as is just and proper.

Dated this 4th day of March 2019.

Respectfully submitted,

/s/ Michael A. Nardella

Michael A. Nardella, Esq.

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**COUNSEL FOR ARVIND MAHENDRU
AS CHAPTER 7 TRUSTEE**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished electronically using the Court's CM/ECF system on March 4, 2019 to all creditors and parties in interest participating in CM/ECF in this instant case and via U.S. Mail to Debtor, James S. Pendergraft, IV, 609 Virginia Drive, Orlando, FL 32803.

/s/ Michael A. Nardella

Michael A. Nardella, Esq.